

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 PM-07 NSC-07 SP-03 SS-20 RSC-01

DODE-00 CIAE-00 INR-11 ACDA-19 NSAE-00 PA-04 PRS-01

USIA-15 TRSE-00 SAJ-01 IO-14 OMB-01 COME-00 EB-11

LAB-06 SIL-01 DRC-01 /152 W
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R 151801Z JUL 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 3812

INFO CINCUSAREUR HEIDELBERG

C O N F I D E N T I A L SECTION 01 OF 02 BONN 11168

CINCUSAREUR PLEASE PASS TO JA AND DCSPER

E.O. 11652: GDS

TAGS: ELAB, MARR, GW

SUBJECT: APPLICABILITY OF NEW FRG PERSONNEL REPRESENTA-
TION LAW TO CIVILIAN EMPLOYEES OF SENDING
STATES FORCES IN FRG

REF: STATE 104443

BEGIN SUMMARY: AT JULY 11 MEETING WITH NUMEROUS REPS OF
INTERESTED FRG MINISTRIES, SENDING STATE REPS STATED
THAT IN SPIRIT OF COOPERATION THEY ABLE TO AGREE TO
APPLY 1974 PERSONNEL REPRESENTATION LAW (PRL) ON PRE-
CONDITION THAT THERE IS FULL ASSURANCE THAT THE PRO-
VISIONS OF RE ARTICLE 56 (9) OF PROTOCOL OF SIGNATURE
(PS) THAT CAME INTO FORCE JANUARY 18, 1974 CONTINUE IN
FORCE UNAFFECTED. FRG REPS UNDERTOOK TO PREPARE DRAFT
GOVERNMENTAL AGREEMENT TO AMEND RE ARTICLE 56(9) BY
SUBSTITUTING REFERENCES TO 1974 PRL IN LIEU OF CURRENT
REFERENCE TO 1955 PRL. END SUMMARY

1. ON THE BASIS OF REFTTEL, USAREUR PERSONNEL AND LEGAL
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STUDY, AND PRIOR MEETING OF SENDING STATES REPS, THE

LATTER AT JULY 11 MEETING INFORMED FRG REPS OF THE ABILITY OF SENDING STATES TO AGREE TO APPLY 1974 PRL IN LIEU OF 1955 PRL SUBJECT TO BASICALLY UNAFFECTED AND CONTINUED APPLICABILITY OF RE ARTICLE 56 (9) OF PS AS AMENDED FROM JANUARY 18, 1974. CHAIRMAN OF MEETING, RUMPF (FOREIGN OFFICE LEGAL SECTION), WHILE STATING AS SET OUT IN FOREIGN OFFICE NOTE OF MARCH 19, THAT SPECIFIC PROVISIONS OF RE ARTICLE 56 (9) CANNOT BE CHANGED UNILATERALLY BY 1974 PRL UNDER PRINCIPLE "PACTA SUNT SERVANDA," STATED THAT OPTICAL PROBLEM OF REFERENCE IN RE ARTICLE 56 (9) OF PS TO DOMESTICALLY SUPERSEDED 1955 LAW SHOULD BE CLARIFIED WITHOUT, HOWEVER, GETTING INTO QUESTIONS OF SUBSTANCE, PROBABLY BY PROTOCOL.

2. U.S. REPS WONDERED WHETHER MERE PROTOCOL WOULD EFFECTIVELY AMEND AND CLARIFY INTERNAL GERMAN LEGAL SITUATION, PARTICULARLY IF A QUESTION WERE RAISED IN COURT. UK REP STRESSED THAT HARMONIOUS INDUSTRIAL RELATIONS BETWEEN SENDING STATES AND THEIR DOMESTIC WORK FORCE REQUIRED CLARITY ON WHAT THE LAW IS AND AVOIDANCE OF PRODUCTION IN COURT OF ARGUMENT CONCERNING APPLICABLE LAW.

3. RUMPF INDICATED THAT IN VIEW OF PARLIAMENTARY RESOLUTION, MENTIONED TOWARD END OF PARA 3 OF BONN'S 5663, FRG WAS CONSIDERING PROTOCOL TO BE PUBLISHED IN BUNDESGESETZBLATT, BUT NOT MAKING ANY CONSTITUTIVE CHANGES TO PS, IN ORDER TO AVOID HAVING TO SUBMIT PROTOCOL OR AGREEMENT TO FRG FEDERAL PARLIAMENT. RUMPF STATED THAT DOCUMENT THUS CLARIFYING AND INTERPRETING BUT NOT CHANGING EXISTING RE ARTICLE 56 (9) WHILE NOT LEGALLY IDEAL WAS CONSIDERED TO PROVIDE HIGH LIKELIHOOD OF CLARIFYING THE SITUATION IN FRG IN MANNER THAT JUDGE COULD OFFICIALLY RECOGNIZE SHOULD LABOR COURT CASE ARISE, AND THAT SMALLER RISK OF UNCLARITY IN SUCH PROCEDURE WAS OUTWEIGHED IN GERMAN VIEW BY AVOIDANCE OF CERTAIN DIFFICULTIES IF "IDEAL" FORMAL AGREEMENT WERE SUBMITTED TO PARLIAMENT FOR APPROVAL. THE SENDING STATE REPS AGREED TO RUMPF'S PROPOSAL TO CONFIDENTIAL

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DISCUSS IN SMALLER WORKING GROUP DRAFT PROTOCOL TO BE PREPARED BY FRG.

4. SIX COMPLEX PROCEDURAL PERSONNEL QUESTIONS WERE DISCUSSED THAT WERE SEEN TO BE RAISED BY APPLICABILITY OF SPECIFIC PROCEDURES OF RE ARTICLE 56(9) OF PS VIS-A-VIS 1974 PRL, RATHER THAN 1955 PRL IN LIGHT OF WHICH THEY WERE DRAFTED. USAREUR IS PREPARED TO GIVE UP ONE

SPECIFIC PROVISION CONCERNING ELIGIBILITY OF NON-GERMANS
FOR WORKS COUNCIL OFFICE (RE ARTICLE 56 (9)(4)) WHICH
IS MORE LIBERAL THAN CORRESPONDING 1955 PROCEDURE, IN
VIEW OF FACT THAT 1974 LAW ABOLISHES SPECIAL PROVISIONS
CONCERNING ELIGIBILITY OF NON-GERMANS FOR WORKS
COUNCIL OFFICE, AND U.S. REP SO INDICATED. BELGIAN,

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 11168

DUTCH, AND FRENCH REPS RESERVED ON THIS, AND UK REP
RESERVED TO THE EXTENT THAT THE IMPORTANCE OF PRESERVING
FULL INTEGRITY OF RE ARTICLE 56(9) ESSENTIALLY IN ITS
CURRENT FORM MAY ULTIMATELY DICTATE. SHOULD DEPT.
OR DOD REQUIRE DETAILED DESCRIPTION OF PROBLEMS AND
CLARIFICATION OFFERED BY FRG REPS, INCLUDING SEVERAL
WHERE MINOR WORDING CHANGES OF APPLICABLE PROVISION OF
RE ARTICLE 56 (9) IN PRESENT FORM MAY BE REQUIRED,
USAREUR DCSPER IS PREPARED TO CABLE REPORT ON THIS.

5. FRG FINANCE MINISTRY EXPERT SUGGESTED AT ONE POINT
THAT PERHAPS COOPERATION PROCEDURE WOULD APPLY WITH
RESPECT TO RE ARTICLE 56 (9) (7) NON-REQUIREMENT TO
SUBMIT OR DISCUSS DRAFT ADMINISTRATIVE INSTRUCTIONS
HE SUGGESTED THAT

TERMS OF RE ARTICLE 56 (9) MIGHT BE READ AS REQUIRING HIGHER DEGREE OF CONSULTATION AND COOPERATION NOW IN VIEW OF 1974 PRL THAN THAT REQUIRED HITHERTO IN VIEW OF 1955 PRL. RUNPF IMMEDIATELY INDICATED THAT IN VIEW OF RESERVATION IN RE ARTICLE 56 (9) WITH RESPECT TO 1955 PRL REQUIREMENT TO SUBMIT OR DISCUSS ADMINISTRATIVE REGULATIONS BEFORE THEIR ISSUANCE, A FORTIORI THERE WERE EFFECTIVE RESERVATIONS BY THE SENDING STATES WITH

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RESPECT TO THE COOPERATION REQUIREMENTS OF THE 1974 PRL IN THIS RESPECT, IN EFFECT THEREBY ACKNOWLEDGING CONTINUED APPLICABILITY OF PROVISIONS OF RE ARTICLE 56 (9) UNAFFECTED BY 1974 PRL AND SENDING STATE AGREEMENT TO ITS APPLICATION.

6. SENDING STATE REPS AGREED WITH FRG REPS TO REPLY TO WORKS COUNCIL'S QUESTIONS ON STATUS OF THIS MATTER THAT SENDING STATES HAVE EXPRESSED WILLINGNESS TO FEDERAL GOVERNMENT TO APPLY 1974 PRL SUBJECT TO APPROPRIATE APPLICATION OF RE ARTICLE 56 (9) AND THAT THE GOVERNMENTS CONCERNED ARE CONSIDERING THE MODALITIES OF GIVING EFFECT TO THIS DECISION, AVOIDING AS MUCH AS POSSIBLE REPLYING TO QUESTIONS CONCERNING TIME AS OF WHICH 1974 PRL BECOMES EFFECTIVE IN VIEW OF FACT THAT CERTAIN PROVISIONS OF 1974 PRL ARE ALREADY BEING APPLIED.

7. AS NEXT STEP IS RECEIPT AND DISCUSSION BY SENDING STATES WITH FRG REPS IN WORKING GROUP OF FRG DRAFT AGREEMENT, AND IN VIEW OF DESIRABILITY OF SETTling THIS MATTER ASAP FOR PURPOSES OF HARMONIOUS U.S.-LOCAL WORK FORCE RELATIONS, EMBASSY REQUESTS EARLY CIRCULAR 175 AUTHORITY TO PROCEED. ANY TEXT AGREED IN WORKING GROUP WOULD, OF COURSE, BE AD REFERENDUM.
HILLENBRAND

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